CHE WIL CHE ALI

v.

MAHMOOD ISMAIL

HIGH COURT MALAYA, KOTA BHARU
MOHD. ZAHIR ISMAIL J
[CIVIL APPEAL NO. 7 OF 1981]
28 APRIL 1982

DAMAGES: *Deceased a trishaw peddlar - Appellant collided into deceased - Trishaw had no lights but had two reflectors on both sides of the rear wheels - Deceased carrying torchlight in his hand which was on - Whether breach of Rule 35 Road Traffic Rules 1959 is evidence of negligence.*

This is an appeal against the decision of the Magistrate's Court, Kota Bharu which held the appellant wholly liable for an accident which caused the death of the deceased trishaw peddlar and awarded damages. The main ground of the appeal was that the deceased had contravened r. 35 of the Road Traffic Rules 1959. The deceased was pedalling a trishaw towards the direction of Pasir Mas at about 10.15 p.m. holding a torchlight in his hand which was on. The trishaw had no lights but had two reflectors on both sides of the rear wheels. The appellant who was travelling in the same direction suddenly collided into the deceased from the rear as he stated that he could not see anything ahead of him until he suddenly noticed the trishaw but it was already too late.

Held:

[1] The Court is of the opinion however breach of the rules is not in itself evidence of negligence on the part of the person concerned. The question that has to be decided is who is negligent.

[2] The appellant had no excuse to knock into the trishaw from behind. He was wholly liable for the accident. As there was no argument on the quantum the Court would leave it as was decided by the learned Magistrate.

[Appeal dismissed.]

Cases referred to:
Clarke and Wife v. Brims [1947] 1 KB 497
Coote v. Stone [1971] 1 WLR 279

Legislation referred to:
Road Traffic Rules 1959, r. 35

For the appellant - H.L. Wrigglesworth
For the respondent - C. Jegathesan

JUDGMENT

Mohd. Zahir Ismail J:

The appellant appealed to this Court against the decision of the learned Magistrate. I dismissed the appeal. He now further appeals.

The case for the respondent was that the deceased was just before the accident at about 10.15 p.m. pedalling a trishaw towards the direction of Pasir Mas. PW1 heard the sound of collision and he turned to see a car knocking the trishaw driven by the deceased. He saw

the deceased carry a torchlight in his hand and the torchlight was on. The trishaw had no lights but had two reflectors on each side of the rear wheels.

The evidence for the appellant was that he saw a trishaw in the middle of the road. Then the accident took place. The reason as to how the accident took place, as given by the appellant, was that at the time there was a car coming towards him and he could not see the trishaw earlier. He further stated at that time he could not see anything in front of him. He dimmed his light and he suddenly noticed the trishaw but it was already too late.

The learned Magistrate in his judgement referred to the brake marks of the appellant's car which was very close to the side table. He stated if the appellant was a careful driver he would not have driven close to the side road. The learned Magistrate further referred to the admission of the appellant in his evidence when he stated he could not see anything ahead of him.

The main reason for the appeal was that the deceased had contravened Rule 35 of the Road Traffic Rules 1959 which reads as follows:

> Between the times of sunset and sunrise vehicles, other than motor vehicles, shall in the case of:
>
> (1) Every vehicle other than a bicycle carry two lighted lamps one on either side of the vehicle. The lamps shall exhibit a white light to the front in the direction in which the vehicle is proceeding or is intended to proceed and shall show the full width of the vehicle. These lights may be fitted with a red disc visible from the rear. If such lights are not fitted with red discs or if the red discs of either of the lights is obscured, the vehicle shall carry a lighted lamp on the off-side of the vehicle exhibiting a red light to the rear.

I am of the opinion however breach of the Rules is not in itself evidence of negligence on the part of the person concerned. The question that has to be decided is who is negligent. The deceased might have contravened the said r. 35 but was he to be blamed for the accident? Supposing it was a bicycle with reflectors being pedalled by the road side, one would have thought that the motorist would be equally blameable if he were to knock into the rear of the bicycle. The trishaw in this case had reflectors although it is slightly wider than a bicycle.

Further, in this case there was evidence that the deceased was carrying a lighted torch. Even if, for the sake of argument, he had no such light there was no excuse for the appellant to knock into him in the rear as the appellant's car is obliged under the law to be equipped with sufficient lights to see what is ahead. The main question is why could not he see the trishaw at a distance within the range of his car's light as expected of him. He did not say he was dazzled by light of the oncoming car. Even if he did, he should have stopped his car instead of driving on to the extent that, as admitted by him, "... at that time I could not see anything in front of me". He said he suddenly saw the trishaw. Again the question is why he could not see it before it was too late.

As we study the sketch plan, there were brake marks on the left side of the road facing Pasir Mas. The direction of the brake marks was towards the middle from the left of the road. This would indicate the car was very close to the road edge before the application of the brakes since from J, the beginning of the brake marks to the left road edge is 1' 10". From J1, end of the left brake mark to F2, the trishaw was 104 feet, denoting the distance even after the braking that the trishaw was pushed to. The glass splinters were from J1 up to the trishaw. From the sketch plan it appeared that the collision occurred on the left side of the road and not in the middle as stated by the appellant.

In *Clarke and Wife v. Brims* [1947] 1 KB 497 where the defendant parked his car without the rear light on during the black-out during the last war and in consequence another vehicle ran into it and suffered damage. The question decided in the case was whether a breach of statutory duty under the provisions of Road Transport Lighting Act 1927 gave rise to a civil action. It was held that the Act imposed public duty only and did not in addition impose duties enforceable by any individuals aggrieved (see p. 505).

In *Coote v. Stone* [1971] 1 WLR 279 it was held that a breach of Various Trunk Roads (prohibition of Waiting) (Clearways) Order 1963 did not give rise to a civil remedy to a person injured thereby. In this case the defendant parked his car in contravention of the Order 1963 and the plaintiff's car collided into the rear of the defendant's car. Davies LJ at p. 283 stated as follows:

> It seems to me that the clearway regulation is not, primarily at any rate, designed to give a civil remedy to a person injured by a breach of it. A fine can be imposed, of course, as I have said; but it is a public duty that is enacted, and I cannot see that it gives rise to any private liability.

The appellant had no excuse to knock the trishaw from behind. He was, in my opinion, wholly liable for the accident. There was no argument on the quantum before me. As such I leave it as was decided by the learned Magistrate.

As such I dismiss his appeal.

Also found at [1982] CLJ 484